IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3216 OF 2006

Milind Desai .. **Applicant**

Versus

State of Maharashtra .. **Respondent**

Mr. Nitin Pradhan for the applicant-accused
Mr. Hingorani APP for the State

CORAM : S.R. SATHE,J.
DATED : 02nd FEBRUARY, 2007

P.C. :-

1. The applicant-original accused No.1 whose earlier bail application was rejected by me by passing very elaborate order and whose S.L.P. (Criminal) No. 2030/2006 was also rejected by the Apex Court by refusing to interfere with the order of rejection of bail granted by this Court has filed the present second application for bail.

2. The present applicant-accused is charge-sheeted alongwith other accused for the offences punishable under sections 466, 467, 468, 471, 420, 409, 120-B of Indian Penal Code for having defrauded the ICICI Bank to the extent of Rs. 36,65,75,000/-.

3. As all the facts giving rise to the present case against the accused have been elaborately stated by me in the earlier order, it is now not necessary to state the same again while considering the applicant's second or successive application for bail. Suffice it to say that the present applicant, Shridhar Ayangar (original accused No.2) and other accused including accused No.3, the manager of Dena Bank hatched a criminal conspiracy to raise funds by taking bill discounting facility from the bank by producing false/bogus sale bills and without doing any actual delivery of material. Prima facie, it does appear that in pursuance of the said conspiracy between the accused, accused No.2 Shridhar Ayangar opened an account in ICICI Bank and availed bill discounting facility to the extent of Rs. 36,65,75,000/-. It was shown that for the said bills which were drawn by Shridhar Ayangar's Suriyaa International against Fortune System, a proprietary concern of applicant-accused, co-acceptance was given by him as well as the bankers of Fortune System i.e. Dena Bank, Thakurdwar Branch. Prima facie from the material on record it appears that the accused Nos.1,2 and 3 were hand in glove and the applicant-accused had also opened an

account with Dena Bank few days prior to the time Shridhar Ayangar accused No.2 opened an account in ICICI Bank. Admittedly, even as on today the original accused No.3, manager of Dena Bank is in jail in respect of this case. Prima facie there is material to show that the applicant-accused had given false address of his business. No material or CD's of which he was doing business were found at the alleged place of his business. Nor any books of accounts bills etc. were found at the said place. In fact, the material on record prima facie shows that a transaction shown by the accused persons between themselves were in fact not genuine but fictitious transactions. All these aspects have been considered by me in my previous order dated 16/03/2006.

4. It is needless to say that when earlier bail application has been rejected by this Court on merits and the said order is also confirmed by the Apex Court, now all that the applicant has to show is that there is change in circumstances after passing of the above mentioned orders and the said change warrants release of accused on bail.

5. Shri Pradhan, learned advocate for the

applicant-accused strenuously argued before me that after the rejection of earlier bail application, Investigating Officer of the Economic Wing has filed additional charge-sheet and two other accused persons have been released on bail by the Additional Sessions Judge and as such the applicant-accused is entitled for bail.

6. It is needless to say that mere filing of an additional charge-sheet can not be considered to be a change in circumstance. Applicant must show that in the additional charge-sheet there is some material which would go to show that the applicant-accused is not involved in the alleged offence and that the additional material destroys the reasons or grounds which resulted in rejection of earlier bail application. However, it must be noted that the learned advocate for the applicant-accused could not point out any such material change in the additional charge-sheet which would give answer to the earlier reasoning adopted by this Court while rejecting the earlier application.

7. The learned advocate for the applicant pointed out that handwriting expert has given his opinion and has stated that the documents in question are not

forged and at least the present applicant is not concerned with the same. However, it must be noted that while rejecting the earlier application filed by the applicant, this aspect has been sufficiently considered by me and it has been specifically observed that even if prima facie there is no material to show that the applicant-accused has actually forged any signature or rubber stamp, it is not so relevant so far as the involvement of the present accused in the total conspiracy is concerned. Here it must be noted that the applicant Nos. 1 to 3 were hand in glove. When the Bank Manager himself was involved in the conspiracy, there was no need for these accused persons to prepare any forged rubber stamp or signature. It has been observed by me that without assessing the net worth of the present applicant-accused or his proprietary concern Fortune System, Dena Bank gave co-acceptance to the bills drawn by Shridhar Ayangar on Fortune System and thus, crores of rupees were made available to Shridhar Ayangar who then siphoned some crores out of the said amount to the present applicant-accused or to his near relatives. This itself shows the conspiracy between them and how they are involved in the offence of cheating and/or criminal breach of trust. So, I have absolutely no hesitation to hold that the applicant-

accused has miserably failed to show that there is any material change in the circumstances which would warrant his release on bail.

8. The applicant is seeking bail also on the ground of parity. It was argued before me that accused Pedubidri involved in this case is released on bail by the Additional Sessions Judge on 19/04/2006. When any accused is claiming benefit of parity, he must show that the accused who is released on bail and the case of the applicant-accused is at par or in other words, his case is also on the same pedestal or that his case is in fact better than the accused who is released on bail. From the perusal of the order by which accused Pedubidri has been released, we find that accused Pedubidri was mainly concerned with the work of development of Software. Admittedly, prosecution did not produce any material to show that the said accused Pedubidri was any way concerned with availing the cash credit facility or procedure of giving co-acceptance etc. Nor there is anything to show that any amount which was granted to Shridhar Ayangar was siphoned towards the said accused. So, considering those aspects the said accused has been released on bail.

9. Similarly, so far as the case of other accused Dinesh Pandey who is released on bail on 07/06/2005 is concerned, he had not at all taken any material part in the entire transaction. He had only initially introduced Iyangar while opening account in the bank. There is nothing on record to suggest that the said witness had received any moneytary benefit or he was to receive any such benefit. So, having regard to this aspect, he was released on bail. But so far as the present applicant-accused is concerned, there is sufficient material on record which definitely prima facie shows his involvement in the entire conspiracy of securing funds from the ICICI Bank and then siphoning the same either to his account or to the account of his relatives. He is the main person involved in the offence of cheating, misrepresentation and/or criminal breach of trust. So, the present applicant-accused is certainly not entitled for bail on the ground of parity.

10. Shri Pradhan learned advocate for the applicant-accused vehemently argued before me that there is no possibility of taking early hearing of this trial. Most of the evidence is documentary evidence. The accused is residing at Pune while most of the

witnesses are at Mumbai. So, under such circumstances, the accused be released on bail. He also submitted that there are instances where the Apex Court has released the accused on bail when there was no possibility of case being tried early. In support of the said proposition he has placed reliance on a case **Satya Brat Gain V/s. State of Bihar (2000) 9 Supreme Court Cases 398**. Firstly, it must be noted that from the said ruling it is not known as to for which offence the accused was being tried in that case. Moreover, admittedly the accused was in custody for a period of five years, here it is not so. Besides this, in that case the Apex Court found that no substantial progress was made. On the contrary, having regard to the dilatory progress of the proceedings and finding that there was no possibility of having trial in near future, it was directed that trial Judge may release the accused imposing some conditions. So, facts of the above mentioned case and the facts of the present case are quite different and said ruling is certainly of no help to the present accused.

11. Shri Pradhan learned Advocate for the accused also placed reliance on a case **Kashmira Singh V/s. The State of Punjab (1977) 4 SCC 291** wherein though accused

was convicted for life imprisonment, Supreme Court granted bail. In that case also the Supreme Court observed that there is no possibility of hearing the appeal of the accused at early stage. Besides this, Supreme Court has also observed that from the fact that they granted special leave to appeal against his conviction indicated that in their opinion, the accused had prima facie good case to consider. Besides this, it was the case where the trial court had in fact acquitted the accused under section 302 but the High Court had held him guilty for the offence punishable under section 302 of IPC. So, taking into consideration, all those peculiar facts, the Apex Court released the accused. So, the above cited case is also of no use to the present applicant. Besides this, incidently it may also be noted that in the above mentioned case recording of evidence was already over. In fact, trial was over. So, there was no question of tampering of evidence etc. while in the instant case, there is every possibility that accused will try to influence the witness and tamper the evidence.

12. My attention is also drawn by the learned advocate for the accused to a case **Shailendrakumar V/s. State of Delhi (2000) 4 SCC 178** wherein though accused

was convicted for 7 years R.I. for the offence punishable under section 304-B he was released on bail by the Apex Court. But that was also a case where the Supreme Court found that there was no possibility of the appeal being heard early and the accused was already in jail for a period of 3 years. So, the above cited case is also of no use to the present applicant.

13. Lastly, the learned advocate for the accused laid his hands on a case **Akhtari Bi (Smt) V/s. State of MP (2001) 4 SCC 355** wherein the accused was released on bail when the appeal against conviction filed by the accused was pending in High Court. That was also because appeal was pending for more than 4 years. Besides this, the accused in the said case was an old and infirm lady whose daughter-in-law having died during pendency of the trial giving birth to a male child who had to be kept in jail to be looked after by the accused in the said case. Hence, she was released on bail. So, bear reading of the above mentioned facts would indicate that this authority will certainly not help the present applicant.

14. While rejecting the earlier application of the present applicant-accused it has been specifically

observed by me that the present applicant-accused was in fact, shown indulgence by the Sessions Court earlier by granting him provisional bail on 26/07/2005 and directing him to surrender on or before 03/10/2005. However, admittedly, he did not surrender accordingly on one pretext or other. Ultimately, on 22/11/2005, order of NBW was issued against him. In spite of the same, he did not surrender and warrant also could not be executed. Ultimately Court again directed to issue NBW. Thereafter, also applicant did not surrender but filed an application in the High Court and sought stay to the warrant on one pretext or other and ultimately, when his bail application was rejected by this Court on 16/03/2006, he was taken in custody. Thus as he has miss-used the facility granted to him he is not entitled for bail.

15. From the facts and circumstances of the case, it is very clear that the accused even influenced some of the bank officers and other persons and succeeded in getting them involved in his plan. He is in habit of influencing people by one way or other and to make them work for his unlawful gain. So, if such person is released on bail in such a grave serious offence which has far reaching consequences and which ultimately,

amounts loss of public money and damage to National economy, there is every possibility that he will interfere with the witnesses for the prosecution or otherwise try to pollute the process of justice. Previous, conduct of the accused indicates that he has propensity to abscond and to bring pressure on others to achieve his oblique purpose and motive. There is reasonable apprehension that course of justice would be thwarted by the applicant-accused. So, I have no hesitation to hold that the facts and circumstances of this case do not warrant grant of present application.

16. Before parting with this application I am constrained to mention one event which has occurred during the pendency of this application before me. However, I make it very clear that the said event has certainly not weighed with me while considering the merits of this application. But at the same time, I think that if at all this circumstance has also some relevancy then it is better to have the same on record.

17. As the earlier bail application of the present applicant was rejected by the undersigned his second application was also directed to be placed before me and accordingly it was placed. However, thereafter,

this Court received one telegram with following contents.

> “Please grant bail to Milind Desai as he is innocent. P.P. is putting pressure on us. We can not speak in open court.
> EOW.
> T.P. Pawar “

18. The receipt of such telegram was brought to the notice of both the sides in open court and the said telegram was further sent to the Commissioner of Police to find out as to who had sent the telegram. Accordingly, the concerned Police officer vide his letter dated 09/12/2006 informed this Court that the said telegram was sent from Dadar Telegraph Office, Mumbai, but the person who actually sent the telegram could not be identified. However, it was also informed that there was no any person by name T.P. Pawar in the Economic Offence Wing (EOW). It is true that one can not positively say that said telegram must have been sent by defence side or by prosecution side. The intention of the party sending such telegram in fictitious name need not be stated. However, taking into consideration all the facts and circumstances I

did not give any importance to the said telegram once report was received from the police. This instance has been placed on record as it had taken place when the matter was pending in this Court.

19. In view of the discussion in paragraph Nos. 1 to 15, it is very clear that there is absolutely no substance in the present application. Hence I pass following order :-

O R D E R

Application is rejected. The trial Court is directed to dispose of the case according to law as expeditiously as possible.

(S.R. SATHE,J.)